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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/665,442	09/19/2000	Stephen J. Brown	HERO-1-1096	5890

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EXAMINER

KALINOWSKI, ALEXANDER G

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/665,442

Applicant(s)

BROWN, STEPHEN J.

Examiner

Alexander Kalinowski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/19/2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. Claims 1-46 are presented for examination.

Specification

2. The abstract of the disclosure is objected to because the abstract contains more than 150 words. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-16, 18-31, and 33-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujimoto, Pat. No. 5,339,821 in view of Yu et al., Pat. No. 5,930,804 (hereinafter Yu).

As to claim 1, Fujimoto discloses A method for remotely administering a person's health care, comprising:

providing a remote apparatus having a user interface to the person (units 8, Fig. 1);

providing a server system having a script generator for generating script programs (unit 5, Fig. 1 and col. 8, lines 18-39);

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generating the script program with the script generator at the server system based in part on the user identifying information (col. 7, lines 60 – col. 8 line 7 and lines 14-39) sending the script program to the remote apparatus via the communication network for interaction with the person (col. 8, lines 18-39).

Fujimoto does not explicitly disclose

sending the biometric information pertaining to the person from the remote apparatus to the server system via a communication network wherein the user identifying information is the biometric information.

However, Yu discloses sending the biometric information pertaining to the person from the remote apparatus to the server system via a communication network wherein the user identifying information is the biometric information (col. 6, line 64 – col. 6, line 45). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Yu within Fujimoto for the motivation of improving secure access to Web based applications (col. 2, lines 41-52).

As to claim 3, Fujimoto does not explicitly disclose The method of Claim 1, wherein the server computer provides security based on the biometric information.

However, Yu discloses wherein the server computer provides security based on the biometric information (col. 6, line 64 – col. 6, line 45). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Yu within Fujimoto for the motivation of claim 1.

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As to claim 4, Fujimoto does not explicitly disclose The method of Claim 3, wherein the server computer limits access to an individualized script program based on the biometric information.

However, Yu discloses wherein the server computer limits access to an individualized medical application based on the biometric information (col. 7, lines 44-50 and col. 15, lines 49-54).). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Yu within Fujimoto for the motivation of claim 1.

As to claim 5, Fujimoto does not explicitly disclose The method of Claim 1, wherein the biometric information is collected via the user interface of the remote apparatus.

However, Yu discloses wherein the biometric information is collected via the user interface of the remote apparatus (col. 5, lines 35-40).). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Yu within Fujimoto for the motivation of claim 1.

As to claim 6, Fujimoto and Yu disclose The method of Claim 5, wherein the script generator individualizes the script program to the person using the biometric information as discussed in claim 1 above.

As to claim 7, Fujimoto does not explicitly disclose The method of Claim 5, wherein the biometric information comprises information that uniquely identifies the person.

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However, Yu discloses wherein the biometric information comprises information that uniquely identifies the person (col. 5, lines 64-66). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Yu within Fujimoto for the motivation of claim 1.

As to claim 8, Fujimoto and Yu disclose The method of Claim 7, wherein the script generator individualizes the script program to the person using the biometric information as discussed in claim 1.

As to claim 9, Fujimoto does not explicitly disclose The method of Claim 7, wherein the biometric information comprises retinal metrics.

However, Yu discloses wherein the biometric information comprises retinal metrics (col. 6, lines 8-11). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Yu within Fujimoto for the motivation of claim 1.

As to claims 10-12, the Examiner takes official notice that it was well known in the biometric arts to use specific types of biometric measurements such as body, odor and iris recognition. The motivation would have been to provide secure means of authenticating a user. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include biometric measurements such as body, odor and iris recognition within Fujimoto and Yu for the motivation stated above.

As to claim 13, Fujimoto does not explicitly disclose The method of Claim 7, wherein the biometric information comprises voice print metrics .

However, Yu discloses wherein the biometric information comprises voice print metrics (col. 6, lines 1-11). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Yu within Fujimoto for the motivation of claim 1.

As to claim 14, Fujimoto does not explicitly disclose The method of Claim 1, wherein the biometric information is collected via a monitoring device connected to the remote apparatus.

However, Yu discloses wherein the biometric information is collected via a monitoring device connected to the remote apparatus (Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Yu within Fujimoto for the motivation of claim 1.

As to claim 15, Fujimoto and Yu disclose The method of Claim 14, wherein the script generator individualizes the script program to the person using the biometric information as explained in claim 1.

As to claim 16, Fujimoto does not explicitly disclose The method of Claim 14, wherein the biometric information comprises information that uniquely identifies the person.

However, Yu discloses wherein the biometric information comprises information that uniquely identifies the person (col. 5, lines 64-66).). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the

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aforementioned limitations as disclosed by Yu within Fujimoto for the motivation of claim 1.

As to claim 18, Fujimoto does not explicitly disclose The method of Claim 16, wherein the server computer provides security based on the biometric information.

However, Yu discloses wherein the server computer provides security based on the biometric information (col. 6, line 64 – col. 6, line 45). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Yu within Fujimoto for the motivation of claim 1.

As to claim 19, Fujimoto does not explicitly disclose The method of Claim 18, wherein the server computer limits access to an individualized script program based on the biometric information.

However, Yu discloses wherein the server computer limits access to an individualized medical application based on the biometric information (col. 7, lines 44-50 and col. 15, lines 49-54).). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Yu within Fujimoto for the motivation of claim 1.

As to claim 20, Fujimoto and Yu disclose The method of Claim 14, wherein the script generator individualizes the script program to the person using the biometric information as disclosed in claim 1.

As to claims 21-27, Fujimoto and Yu do not explicitly disclose The method of Claim 23, wherein the biometric information is a heart beat signature, and physiological

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measurements pertaining to body fluid such as breath, blood, urine and an antigen signature of urine .

As to claims 28-31 and 33-46, the claims are similar in scope to claims 1, 3-16, and 18-27 and are rejected on the same basis.

5. Claims 2, 17, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujimoto and Yu as applied to claims 1, 14, and 28 above, and further in view of Nichols et al., Pub. No. 2001/0031071 (hereinafter Nichols).

As to claim 2, Fujimoto and Yu do not explicitly disclose The method of Claim 1, wherein the remote apparatus verifies the biometric information as that of an authorized user before the remote apparatus can be used.

However, Nichols discloses wherein the remote apparatus verifies the biometric information as that of an authorized user before the remote apparatus can be used (paragraph 28). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitations as disclosed by Nichols within Fujimoto and Yu for the motivation of providing secure access to medical devices (paragraph 11).

As to claims 17 and 32, the claim is similar in scope to claim 2 and is rejected on the same basis.

Double Patenting

6. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or

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discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

7. Claims 1-46 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-46 of copending Application No. 10/233,296. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Pat. No. 4,838,275 discloses a home medical surveillance system for monitoring patients.
- b. Pat. No. 6,014,626 discloses a patient monitoring system that includes speech recognition capabilities.
- c. Pub. No. 2001/0032098 discloses an Internet ready medical device that can use biometrics to identify patients.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Kalinowski, whose telephone number is (703) 305-2398. The examiner can normally be reached on Monday to Thursday from 9:00 AM to 6:30 PM. In addition, the examiner can be reached on alternate Fridays.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached on (703) 305-9588. The fax telephone number for this group is (703) 305-7687 (for official communications including After Final communications labeled "Box AF").

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th Floor, receptionist.



Alexander Kalinowski

Primary Examiner

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3/21/04